

AMENDED IN ASSEMBLY MAY 23, 2014

AMENDED IN ASSEMBLY APRIL 10, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1897

Introduced by Assembly Member Roger Hernández

February 19, 2014

An act to add Section 2810.3 to the Labor Code, relating to private employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, as amended, Roger Hernández. Labor contracting: client liability.

Existing law regulates the terms and conditions of employment and establishes specified obligations of employers to employees. Existing law prohibits a person or entity from entering into a contract for labor or services with a construction, farm labor, garment, janitorial, security guard, or warehouse contractor, if the person or entity knows or should know that the contract or agreement does not include sufficient funds for the contractor to comply with laws or regulations governing the labor or services to be provided.

This bill would require a client ~~employer, as defined,~~ *employer* to share with a labor contractor all civil legal responsibility and civil liability for the payment of wages, the failure to report and pay all required employer contributions, worker contributions, and personal income tax withholdings, and the failure to obtain valid workers' compensation coverage. The bill would define a client employer as ~~an individual or entity~~ *a business entity* that obtains or is provided workers

to perform labor or services within the usual course of business ~~of the individual or entity~~ from a labor contractor, *except as specified*. The bill would define a labor contractor as an individual or entity that supplies workers, ~~by contract or otherwise~~ *either with or without a contract, to a client employer to perform labor or services within the client employer's usual course of business for a client employer and would except from this definition specified nonprofit, labor, and motion picture payroll services organizations*. The bill would specify that it does not prohibit client employers and labor contractors from mutually contracting for otherwise lawful remedies for violations of its provisions by the other party. The bill would require a client employer or labor contractor to provide to a requesting enforcement agency or department, and make available for copying, information *within its possession, custody, or control* required to verify compliance with applicable state laws. The bill would authorize the Labor Commissioner, the Division of Occupational Safety and Health, and the Employment Development Department to adopt necessary regulations and rules to administer and enforce the bill's provisions. The bill would provide that waiver of its provisions is contrary to public policy, void, and unenforceable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2810.3 is added to the Labor Code, to
2 read:
3 2810.3. (a) As used in this section:
4 (1) "Client employer" means ~~an individual or entity~~ *a business*
5 *entity, regardless of its form*, that obtains or is provided workers
6 to perform labor or services within ~~the~~ *its* usual course of business
7 ~~of the individual or entity~~ from a labor contractor. "Client
8 employer" *does not include a business entity with a workforce of*
9 *less than 25 workers, including those hired directly by the client*
10 *employer and those obtained from, or provided by, any labor*
11 *contractor*.
12 (2) "Labor contractor" means an individual or entity that
13 ~~contracts with~~ *supplies, either with or without a contract, a client*
14 ~~employer to supply~~ *with* workers to perform labor or services
15 within the *client employer's* usual course of ~~business or otherwise~~
16 ~~provides workers to perform labor or services within the usual~~

1 ~~course of business for the client employer.~~ *business.* “Labor
2 contractor” does not include any of the following:

3 (A) A bona fide nonprofit, community-based organization that
4 provides services to low-wage workers.

5 (B) A bona fide labor organization or apprenticeship program
6 or hiring hall operated pursuant to a collective bargaining
7 agreement.

8 (C) A motion picture payroll services company as defined in
9 subparagraph (A) of paragraph (4) of subdivision (f) of Section
10 679 of the Unemployment Insurance Code.

11 (3) “Wages” has the same meaning provided by Section 200
12 and all sums payable to an employee or the state based upon any
13 failure to pay wages, as provided by law.

14 (4) “Worker” does not include an employee who is exempt from
15 the payment of an overtime rate of compensation for executive,
16 administrative, and professional employees pursuant to wage orders
17 by the Industrial Welfare Commission described in Section 515.

18 (5) “Usual course of business” means the regular and
19 customary work of a business, performed within or upon the
20 premises or worksite of the client employer.

21 (b) A client employer shall share with a labor contractor all civil
22 legal responsibility and civil liability for the following:

23 (1) The payment of wages to workers provided by a labor
24 contractor.

25 (2) The failure to report and pay all required employer
26 contributions, worker contributions, and personal income tax
27 withholdings as required by the Unemployment Insurance Code.

28 (3) Failure to secure valid workers’ compensation coverage as
29 required by Section 3700.

30 (c) A client employer shall not shift to the labor contractor any
31 legal duties or liabilities under the provisions of Division 5
32 (commencing with Section 6300) with respect to workers supplied
33 by the labor contractor.

34 (d) The provisions of subdivisions (b) and (c) are in addition
35 to, and shall be supplemental of, any other *theories of* liability or
36 requirement established by statute or common law.

37 (e) This section does not prohibit a client employer from
38 establishing, exercising, or enforcing by contract any otherwise
39 lawful remedies against a labor contractor ~~for indemnification~~ for
40 liability created by acts of a labor contractor.

1 (f) This section does not prohibit a labor contractor from
2 establishing, exercising, or enforcing by contract any otherwise
3 lawful remedies against a client employer ~~for indemnification~~ for
4 liability created by acts of a client employer.

5 (g) Upon request by a state enforcement agency or department,
6 a client employer or a labor contractor shall provide to the agency
7 or department any information *within its possession, custody, or*
8 *control* required to verify compliance with applicable state laws.
9 Upon request, these records shall be made available promptly for
10 inspection, and the state agency or department shall be permitted
11 to copy them. *This subdivision does not require the disclosure of*
12 *information that is not otherwise required to be disclosed by*
13 *employers upon request by a state enforcement agency or*
14 *department.*

15 (h) The Labor Commissioner may adopt regulations and rules
16 of practice and procedure necessary to administer and enforce the
17 provisions of subdivisions (b) and (g) that are under his or her
18 jurisdiction.

19 (i) The Division of Occupational Safety and Health may adopt
20 regulations and rules of practice and procedure necessary to
21 administer and enforce the provisions of subdivisions (c) and (g)
22 that are under its jurisdiction.

23 (j) The Employment Development Department may adopt
24 regulations and rules of practice and procedure necessary to
25 administer and enforce the provisions of subdivisions (b) and (g)
26 that are under its jurisdiction.

27 (k) A waiver of this section is contrary to public policy, and is
28 void and unenforceable.

29 (l) *This section shall not be interpreted to impose individual*
30 *liability on a homeowner for labor or services received at the home*
31 *or the owner of a home-based business for labor or services*
32 *received at the home.*

33 (m) *This section shall not be interpreted to impose liability on*
34 *a client employer for the use of a bona fide independent contractor*
35 *or to change the definition of independent contractor.*